IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

COMPANY APPLICATION No. 86 of 2007

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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IDEA CELLULAR LTD. - Applicant(s)

Versus

.. - Respondent(s)

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Appearance :

MR MIHIR JOSHI, ld. Senior advocate for SINGHI & CO for Applicant(s) : 1,
None for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 23/02/2007

ORAL JUDGMENT

Present Judges summons has been taken out by the IDEA CELLULAR LTD. (transferee company) for an appropriate order of holding of the meeting of the preference shareholders, equity shareholders of the of the applicant company for the purpose of considering and if thought fit approving with or without modification(s), the arrangement embodied in the scheme of amalgamation of Bhagalaxmi Investments Private Limited, Sapte Investments Private Limited, Asian Telephone Services Limited, Vsapte Investments Private Limited, BTA Cellcom Limited, Idea Mobile Communications Limited and Idea Telecommunications Limited (all transferrer companies) with the applicant company. It is also further prayed to dispense with the meeting of the creditors of the applicant company in light of the fact that rights and interests of the creditors of the applicant company are not affected by the scheme of amalgamation as proposed.

2. Shri Mihir Joshi, learned senior advocate appearing on behalf of the applicant company has submitted that Bhagalaxmi Investments Private Limited, Sapte Investments Private Limited, Asian Telephone Services Limited, Vsapte Investments Private Limited, Idea Mobile Communications Limited and Idea Telecommunications Limited all are wholly subsidiary of IDEA CELLULAR LTD. (transferee company). It is also further submitted that so far as one of the transfer company BTA Cellcom Limited is concerned, its entire paid up share capital is held by Sapte, Bhagalaxmi, Asian Telephones, Vsapte and the transferee

company through their nominees respectively.

3. While relying upon the order passed by the learned single Judge of this Court dated 31-1-2003 passed in Company Application No.30 of 2003, Shri Joshi has requested to dispense with the meeting of the creditors of the applicant company by submitting that rights and interests of the creditors of the transferee company are not affected by scheme of amalgamation as proposed. Necessary averments for dispensing with the meeting of the creditors are made in para 45 of the application.

4. Having gone through the application and the supporting affidavit of Shri Pankaj Kapdeo filed on 22-2-2007 and the annexures therein referred to (Annexure K being a copy of the scheme of amalgamation) and having heard Shri Joshi, learned senior advocate for the applicant company, this Court pass the following order.

1. That a meeting of the preference shareholders of the applicant company shall be convened and held at Town Hall, Sector 17, Gandhinagar 382 011 on Monday, the 26th day of March 2007 at 10:00 a.m. for the purpose of considering, and if thought fit, approving with or without modification(s), the arrangement embodied in the scheme of amalgamation of Bhagalaxmi Investments Private Limited, Sapte Investments Private Limited, Asian Telephone Services Limited, Vsapte Investments Private

Limited, BTA Cellcom Limited, Idea Mobile Communications Limited and Idea Telecommunications Limited with the application company.

2. That a meeting of the equity shareholders of the applicant company shall be convened and held at Town Hall, Sector 17, Gandhinagar 382 011 on Monday, the 26th day of March 2007 at 11:00 a.m., or immediately after the conclusion of the meeting of the preference shareholders of the applicant company (whichever is later) for the purpose of considering, and if thought fit, approving with or without modification(s), the arrangement embodied in the scheme of amalgamation of Bhagalaxmi Investments Private Limited, Sapte Investments Private Limited, Asian Telephone Services Limited, Vsapte Investments Private Limited, BTA Cellcom Limited, Idea Mobile Communications Limited and Idea Telecommunications Limited with the application company.

3. That at least 21 clear days before the day appointed for the meetings to be held as aforesaid, an advertisement convening the said meetings indicating the day, the date, the place and the time as aforesaid and stating that copies of the Scheme of Amalgamation and of the statement required to be furnished pursuant to Section 393 of the Companies Act, 1956 and the Form of Proxy can be obtained free of charge at the registered office of the applicant company or at the office of its advocate i.e. M/s Singhi & Co., 7-8 Premchand House Annexe, Ashram Road, Old High Court Way,

Ahmedabad 380 009 be inserted once in each of "Times of India" and "Gujarat Samachar", both Ahmedabad editions. Publication of the advertisement in the Gujarat Government Gazette is dispensed with.

4. That in addition, at least 21 clear days before the date of the meetings to be held as aforesaid, a notice convening the said meetings indicating the day, the date, the place and the time as aforesaid together with a copy of the said Scheme of Amalgamation, a copy of the statement required to be furnished prusuant to Section 393 of the Companies Act, 1956 and the prescribed Form of Proxy shall be sent by a prepaid letter post under Certificate of Posting, addressed to each of the preference shareholders and equity shareholders of the applicant company at their registered or last known addresses. The notice shall be sent to the preference shareholders and the equity shareholders of the applicant company with reference to the list of persons appearing on the record of the applicant company and its register as on 23rd February 2007.

5. That Mr. Gian Prakash Gupta, the Director of the applicant company, and failing him Mr. M.R. Prasanna, the Director of the company and failing him Mr. Sanjeev Aga, Director of the applicant company shall be the Chairman of the aforesaid meetings to be held on Monday, the 26th day of March 2007 and in respect of any adjournment or adjournments thereof.

6. That the Chairman appointed for the aforesaid meetings do issue advertisement and send out the notices of the meetings referred to above. The Chairmen are free to avail the services of the applicant company or any agency for carrying out the said direction. It is further directed that the Chairman of the meetings shall have all powers under Articles of Association of the applicant company and under the Companies (Court) Rules, 1959 in relation to conduct of meetings including an amendment to the aforesaid scheme of amalgamation, if any, proposed at the aforesaid meetings by any person(s) and to ascertain the decision of the meeting on a poll.
7. That the quorum for the meetings of the preference shareholders shall be 1 person present in person. The quorum for the meeting of the equity shareholders shall be 5 persons present in person.
8. That voting by proxy is permitted, provided that the proxy in the prescribed form and duly singed by the person entitled to attend and vote at the meetings, is filed with the applicant company at its registered office at Suman Tower, Plot No.18, Sector 11, Gandhinagar, Gujarat 382 011, not later than 48 hours before the meetings.
9. That the value of each member shall be in accordance with the books of the applicant company and where the entries in the records are disputed, the Chairman shall determine the value for purposes of the meetings and his decision in that behalf shall be final.

10. It is further ordered that the Chairman do report to this court the result of the said meetings within 14 days of the conclusion of the meetings and the said report shall be verified by his affidavit.

5. Considering the averments in para 45 of the application to the effect that there is no compromise offered to any of the creditors and neither any liability of the creditors under the scheme is being reduced and considering the fact that as per the balance sheet as on 31-12-2006, there is an excess of assets over the liabilities in the case of transferee company and considering the fact that the aggregate excess of assets over the liabilities of transferor companies and transferee company after adjustment of inter company balances and investments as on 31-12-2006 is about Rs.1048.76 crores and considering the submission on behalf of the applicant that interest of the creditors are in no way affected by the scheme of amalgamation, this Court is of the view that meeting of the creditors is not required to be called for. Hence, the meeting of the creditors i.e. secured or unsecured of the applicant company is hereby dispensed with.

6. This company application is disposed of. No costs.

(M.R. SHAH, J.)

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